

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 12, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

LOD No. S-28,762

Hawaii

Amendment of Grant of Perpetual, Non-Exclusive Easement to Rutter/KW
Kohanaiki LLC for Access and Utility Purposes, LOD No. S-28,762, Kohanaiki,
North Kona, Island of Hawaii, Tax Map Key: 3rd/ 7-3-09: portion of Mamalahoa
Trail

APPLICANT:

Kohanaiki Shores LLC, a Delaware limited liability company, whose business and
mailing address is c/o Discovery Kohanaiki Management, LLC, P.O. Box 9015, Kailua-
Kona, HI 96745.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Mamalahoa Trail situated at Kohanaiki, North Kona, Hawaii, identified by Tax
Map Key: 3rd/ 7-3-09: portion of Mamalahoa Trail, as shown on the attached maps
labeled Exhibits A-1 and A-2.

AREA:

1,944 square feet, more or less.

ZONING:

State Land Use District:	Conservation (General Subzone)
County of Hawaii CZO:	N/A; however area is within SMA

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ____
NO X

CURRENT USE STATUS:

Partly encumbered by Grant of Non-Exclusive Easement LOD No. S-28,762 dated February 18, 2005 and issued to Rutter/KW Kohanaiki LLC for access and utility purposes.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on July 8, 1986 with a finding of no significant impact (FONSI).

A Conservation District Use Permit (CDUA HA-3124B) was approved by the Board of Land and Natural Resources on January 23, 2004.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO ____
Registered business name confirmed:	YES <u>X</u>	NO ____
Applicant in good standing confirmed:	YES <u>X</u>	NO ____

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.
- 2) Comply with all terms and conditions of Conservation District Use Permit No. HA-3124B.

- 3) Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department.

REMARKS:

Kohanaiki Shores LLC (Applicant) is developing a residential community together with private and public recreational facilities located on its private lands at Kohanaiki, North Kona, Hawaii, designated as TMKs 3rd/ 7-3-09: 03 & 16. Applicant acquired the subject lands from Rutter/KW Kohanaiki LLC (Rutter) by Warranty Deed dated June 6, 2005 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-111872. The Mamalahoa Trail runs along the length of parcel 3rd/ 7-3-09: 03 at its mauka boundary. As a result, there is no way to access that parcel without breaching the trail. See Exhibits A-1 and A-2 attached.

At its meeting of January 23, 2004 (Item D-17), the Board of Land and Natural Resources approved Rutter's Conservation District Use Application HA-3124B for an easement over the trail.

At its meeting of March 12, 2004 (Item D-10), the Board approved the grant of a perpetual, non-exclusive easement to Rutter for access and utility purposes over a portion of the trail abutting Applicant's property. The easement was appraised at \$3,625, which Rutter paid. Grant of Non-Exclusive Easement LOD No. S-28,762 was then prepared and executed by the State and Rutter as of February 18, 2005, and recorded in the Bureau of Conveyances as Document No. 2005-042286. On June 6, 2005, Rutter conveyed the subject land as well as the easement over the trail to Applicant pursuant to the above-referenced Warranty Deed. The Grant of Non-Exclusive Easement provides at section 5 that the easement runs with TMK 3rd/ 7-3-09: 03, provided that insurance is maintained on the area. Applicant has provided Land Division with a current certificate of liability insurance meeting the requirements of the easement instrument.

In August 2008, Applicant advised staff that the easement corridor shown on the approved construction plans did not align with the easement corridor under LOD No. S-28,762. The construction plans were approved by the Department of Land and Natural Resources on July 7, 2006, and Applicant advises that construction now complete. Applicant is requesting an amendment of the easement to correct the map and legal description of the easement to correspond with the as-planned and as-built conditions.

Section 7 of Grant of Non-Exclusive Easement, LOD No. S-28,762, provides that:

Should future development necessitate a relocation of the easement granted herein, or any portion thereof, the relocation shall be accomplished at the Grantee's own cost and expense; provided, however, that if other lands of the Grantor are available, the Grantor will grant to the Grantee without payment of

any monetary consideration, a substitute easement of similar width within the reasonable vicinity of the original alignment, which substitute easement shall be subject to the same terms and conditions as that herein granted and as required by law.

In this case, the proposed realignment of the easement largely overlaps the area of the existing recorded easement. See Exhibit A-2 attached, where the existing easement is shown in green and the proposed realignment is shown in blue. However, the proposed realignment shifts southward by approximately 20-30 feet. The area of the existing easement is 3,000 square feet while the area of the proposed realignment will be 1,944 square feet. See Exhibit B for the metes and bounds description of the new proposed easement.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

By memorandum dated October 24, 2008, staff solicited comments the following State agencies with the following results:

Agency	Date Received	Response
DLNR – DOFAW – Na Ala Hele	NA	No response.
DLNR – Historic Preservation	11/20/08	No historic properties will be affected by the amendment because development/urbanization has altered the land with a roadway existing in the amended easement area. Developer has committed to long-term maintenance of Mamalahoa Trail and has agreed to install interpretive signs every 200 yards along the trail.
DLNR – Conservation and Coastal Lands	11/17/08	No comments.

Staff has included a condition that the Applicant must comply with all the terms and conditions of CDUP No. HA-3124B.

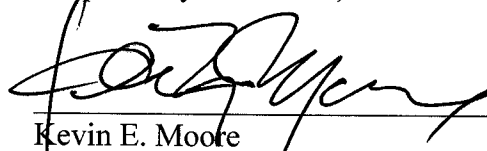
RECOMMENDATION: That the Board:

1. Subject to Applicant Kohanaiki Shores LLC fulfilling all of the Applicant requirements listed above, authorize the amendment of Grant of Non-Exclusive Easement, LOD No. S-28,762 to correct the map and legal description of the easement to correspond with the as-planned and as-built conditions of the

easement corridor under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:


- A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
- B. Review and approval by the Department of the Attorney General; and
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

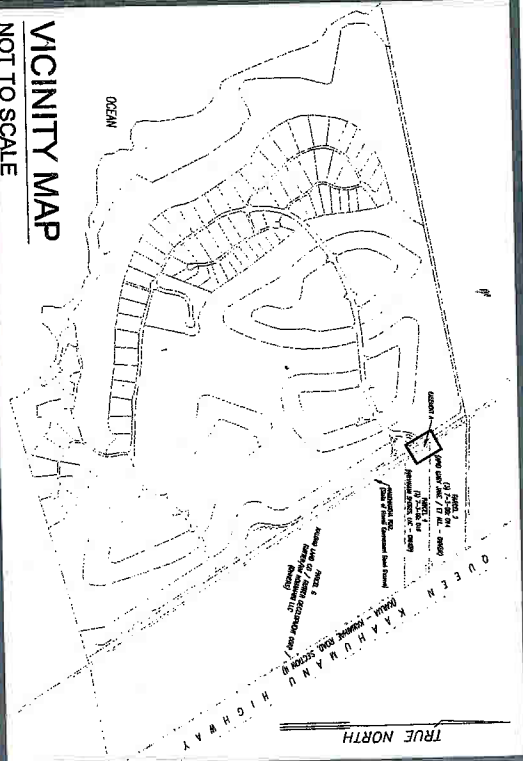


TRUE NORTH
SCALE: 1 in. = 30 Ft.

PARCEL 2
(3) 7-3-09: 014
(APRD. MARY JANE / ET AL. - OWNER)
S 8,240.29
E 8,074.35

PARCEL 4
(3) 7-3-09: 016
(KOHAWAHI SHORES, LLC - OWNER)

VICINITY MAP
NOT TO SCALE



SPIKE IN CONC.
S 8,225.66
E 8,065.30

52°42'24"

328°14'41.6" 100.00

328°14'41.6" 95.00

King's Highway (Mamalahoe Trail)
(State of Hawaii Government Road Reserve)

328°14'41.6" 4679.30

4113.54

REVISED EASEMENT A
1,944 SQ. FT.

50 FT WIDE UNDISTURBED
NATURAL LAVA ZONE

91°48'14" 36.00

148°14'41.6" 95.00

232°42'24" 20.56

271°48'14" 36.00

LOT 106

EASEMENT A
CSF 23,923
3,000 SQ. FT.

LOT A

LOT 89

LOT 107

EASEMENTS 51 & 55

LOT 104

110 FT WIDE NO
STRUCTURE ZONE

LOT 101

EXHIBIT A-2

SCALE: 1"=30'

EXHIBIT A-2

Exhibit B

PERPETUAL NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT

EASEMENT A

Kohanaiki, North Kona, Island of Hawaii, Hawaii

Being a portion of the Government Land Of Kohanaiki
Being also a portion of King's Highway (Mamalahoa Trail)

Beginning at the North corner of this easement and on the West boundary of Grant 2942 to Hukiloa, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KEAHOLE 2" being 8,240.29 feet South and 8,074.35 feet East, thence running by azimuths measured clockwise from True South:

- | | |
|-------------------|--|
| 1. 328° 14' 41.6" | 95.00 feet along Grant 2942 to Hukiloa; |
| 2. 52° 42' 24" | 20.56 feet along the remainder of King's Highway (Mamalahoa Trail); |
| 3. 148° 14' 41.6" | 95.00 feet along Grant 3086 to Kapena; |
| 4. 232° 42' 24" | 20.56 feet along the remainder of King's Highway (Mamalahoa Trail) to the point of beginning and containing and Area of 1,944 Square Feet. |